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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91244593
Party	Defendant JH Biotech, Inc.
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Date	08/07/2020
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Mark: SEEDUP
Serial No. 87/953,971
Date of Filing: 06-08-2018

Cytozyme Laboratories, Inc.)	
)	
Opposer,)	Opposition No.: 91244593
)	
vs.)	
)	
JH Biotech, Inc.)	
)	NOTICE OF FILING
Applicant.)	
_____)	

Applicant JH Biotech, Inc. hereby files with the Board, and notifies Opposer of the filing of the corrected trial deposition transcript of the cross-examination of Opposer’s witness, Eric Chandler Baughman which was taken on May 6, 2020.

The original transcript filed June 15, 2020 incorrectly shows “SEED+”, as “SEED ”. The corrected transcript being provided with this filing has been acknowledged by the deponent.

 /s/ Ralph D. Chabot
Ralph D. Chabot
Attorney for Applicant
JH Biotech, Inc.

Dated: August 7, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing:

NOTICE OF FILING

has been served on Peter M. de Jonge of Thorpe North & Western, LLP, counsel for Opposer, by forwarding said copy on August 7, 2020 via email to: dejonge@tnw.com; jillaine.chaston@tnw.com; kaelynn.moultrie@tnw.com; aimee.kaderabek@tnw.com; litigation@tnw.com.

/s/ Ralph D. Chabot

Ralph D. Chabot
Attorney for Applicant
JH Biotech, Inc.

Date: August 7, 2020



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Transcript of Eric Chandler Baughman

Date: May 6, 2020

Case: Cytozyme Laboratories, Inc. -v- JH Biotech, Inc. (TTAB)

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Cytozyme Laboratories, Inc.,
Opposer,
v.
JH Biotech, Inc.,
Applicant.

In the Matter of:
Mark: SEEDUP Serial No. 87/953,971
Date of Filing: 06-08-2018
Opposition No.: 91244593

TELEPHONIC DEPOSITION CROSS-EXAMINATION OF
ERIC CHANDLER BAUGHMAN
Wednesday, May 6, 2020
12:02 p.m.

Job No.: 296799
Pages: 1 - 31
Reported By: Debra A. Bollman, RMR, CSR No. 11648

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TELEPHONIC DEPOSITION OF ERIC CHANDLER

BAUGHMAN:

Witness location:

Salt Lake City, Utah

Pursuant to notice, before Debra Bollman
Farfan, Registered Merit Reporter, Certified
Realtime Reporter and Certified Shorthand Reporter
No. 11648, in and for the State of California.

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A P P E A R A N C E S

ON BEHALF OF OPPOSER CYTOZYME LABORATORIES

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I N D E X

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I N D E X O F E X H I B I T S

EXHIBITS	DESCRIPTION	PAGE
NONE		

1 P R O C E E D I N G S

2 MR. CHABOT: Ralph D. Chabot, counsel for
3 applicant, JH Biotech, Incorporated.

4 MR. DE JONGE: And Peter de Jonge, counsel
5 for Cytozyme Laboratories, Inc., Opposer.

6 MS. MANESS: Catherine Maness, counsel for
7 Cytozyme.

8 S T I P U L A T I O N S

9 THE REPORTER: Will counsel please stipulate
10 that in lieu of formally swearing in the witness,
11 the reporter will instead ask the witness to
12 acknowledge that their testimony will be true under
13 the penalties of perjury, that counsel will not
14 object to the admissibility of the transcript based
15 on proceeding in this way, and that the witness has
16 verified that he is in fact Eric Chandler Baughman.

17 Counsel, do you agree?

18 MR. DE JONGE: Yes, we stipulate to that.

19 MR. CHABOT: Yes.

20 THE WITNESS: Yes, thank you.

21 MS. MANESS: Yes.

22 Whereupon,

23 ERIC BAUGHMAN,

24 the witness herein, was examined and
25 testified under penalty of perjury as follows:

1 CROSS-EXAMINATION

2 BY MR. CHABOT:

3 Q. For purposes of describing each company
4 moving forward, I'm going to describe Cytozyme
5 Laboratories, Incorporated, as simply Cytozyme, and
6 JH Biotech, Incorporated, simply as JH Biotech.

7 Mr. Baughman, is the website
8 www.cytozyme.com owned by Cytozyme?

9 A. Yes, it is.

10 Q. Is the website www.cytozymeag.com owned by
11 Cytozyme?

12 A. Yes, it is.

13 Q. Is Verdesian a distributor of SEED+ product?

14 A. Yes, they are.

15 Q. Is their website www.vlsci.com?

16 A. As I recall, that's correct, yeah.

17 Q. If someone was interested in purchasing a
18 SEED+ product for the first time, is it true they
19 would have to speak with a sales representative
20 before placing an order?

21 A. Yes, that's correct.

22 Q. If someone were to visit either of the
23 Cytozyme websites, can they place an order online?

24 A. I don't believe either of the websites allow
25 for direct ordering system.

1 So the answer would be no to that.

2 Q. And would the same be true for the Verdesian
3 website to your knowledge?

4 A. You know, I've not looked in detail at the
5 Verdesian website, so I wouldn't be able to answer
6 that question.

7 Q. Okay. Isn't it true that sales
8 representatives will visit customers at their place
9 of business?

10 A. That's correct. Among other things, but,
11 yeah.

12 Q. Was any document provided as part of your
13 declaration indicating that a SEED+ product could be
14 ordered online?

15 A. I believe it was described in there that
16 online orders or inquiries could be made for the
17 product, that's correct.

18 Q. My question was was there any document
19 provided as part of your exhibits to your
20 declaration indicating --

21 MR. DE JONGE: I'm sorry to interrupt,
22 Ralph. If -- I was just going to caution
23 Mr. Baughman. If he needs to look at the documents,
24 he's able to do so. Is that fair, Ralph?

25 MR. CHABOT: Oh, yes, that is correct. Yes,

1 yes, please. I believe --

2 MR. DE JONGE: Would you mind asking that
3 question again, please, as he's looking at these?

4 MR. CHABOT: Sure.

5 BY MR. CHABOT:

6 Q. Was any document provided as part of your
7 declaration indicating that SEED+ can be ordered
8 online?

9 A. I'm trying to find that, Peter. But, again,
10 we had indicated -- okay.

11 Retail stores, catalogs, online.

12 Yes. So in my declarations, it does mention
13 that the products can be made available online.

14 And that is true and consistent even today
15 for some products. But, again, at the time of --
16 prior to Verdesian, products could be transacted,
17 ordered and paid for, via online methods.

18 MR. CHABOT: I'm going to object to that
19 response as nonresponsive. Let me repeat the
20 question again.

21 BY MR. CHABOT:

22 Q. Was any document provided as part of your
23 declaration -- and by that I mean exhibits to the
24 declaration -- indicating that SEED+ can be ordered
25 online?

1 MR. DE JONGE: Do you want to look at the
2 attachments? I think he's asking whether any of the
3 attachments to the exhibits --

4 MR. CHABOT: That's correct.

5 MR. DE JONGE: Yeah, whether any of those
6 attachments...

7 THE WITNESS: Yeah, so it looks -- it
8 appears that in one of the exhibits -- I mean, there
9 are references to the -- to the websites, cytozymeag
10 and also Verdesian, leading more to information
11 rather than citing specific ordering guidelines.

12 But, as I said, I'm sure that what my
13 statement says, that the products could be ordered
14 online, and that's supported in some of the
15 exhibits, I believe the answer would be yes, there
16 is information to that extent.

17 BY MR. CHABOT:

18 Q. Could you please identify the specific
19 exhibit that you're talking about that you believe
20 supports the allegation that the SEED+ product can
21 be ordered online.

22 A. So it looks as though it's under Exhibit 6.

23 MR. DE JONGE: And the page he's looking at,
24 it's Bates stamped. That exhibit appears to be a
25 little bit thick. But it's CYTOZYME0101 is the

1 Bates stamp number that he's looking at.

2 I hope you don't mind me sort of helping him
3 with this on the documents, Ralph.

4 MR. CHABOT: Not at all.

5 MR. DE JONGE: Okay.

6 BY MR. CHABOT:

7 Q. So it's your testimony today that the Bates
8 stamped CYTOZYME0101, which is part of Exhibit 6 to
9 your declaration, is provided as indicating SEED+
10 can be ordered online?

11 A. Again, it's -- you know, it's referencing
12 the websites of cytozymeag and Verdesian more for
13 the purposes of obtaining information about the
14 SEED+ or other products offered through Verdesian.

15 Q. I understand that this particular reference
16 is providing information about the product, but my
17 question is: Is there any document provided as part
18 of your declaration indicating SEED+ products can be
19 ordered online?

20 MR. DE JONGE: I'm just going to object
21 because he's answered your question a couple of
22 times. You may not like the answer, but he has
23 answered it.

24 But if you want to clarify.

25 THE WITNESS: Yeah, and I think, you know, I

1 want to be clear that, at points in the past,
2 customers could order the products online through
3 Cytozyme.

4 I don't know if Verdesian has a online
5 ordering system. I suspect there is some way that a
6 customer, interested customer, could purchase the
7 products online, but I'm not sure of that.

8 So I guess what I can speak to is that,
9 according to my declarations, when we talk about
10 products being available through multiple channels,
11 including online, that would be a true and accurate
12 statement at some point in the past.

13 Again, today, because of the relationship
14 with Verdesian, we do direct inward inquiries of the
15 product to the distributor.

16 BY MR. CHABOT:

17 Q. Was any document provided as part of your
18 declaration indicating that SEED+ can be purchased
19 using a credit card?

20 MR. DE JONGE: Do you want to look at the
21 documents again?

22 THE WITNESS: Yeah. So, look, I've reviewed
23 these. To my knowledge, I don't believe there's
24 information in the exhibits indicating that
25 customers can pay for the product using a credit

1 card specifically, no.

2 BY MR. CHABOT:

3 Q. So your answer would be no?

4 A. That's correct.

5 Q. Would it be accurate to say Exhibits 1
6 through 6 of your declaration are directed to
7 agriculture businesses?

8 A. What was the last? Agriculture what?

9 Q. Businesses.

10 A. Businesses. Is it fair to say that
11 Exhibit 1 through 6 pertain to agricultural
12 businesses?

13 Q. Yes.

14 A. Am I understanding the question correctly?

15 Q. Yes.

16 MR. DE JONGE: I'll just object as vague as
17 to what you mean by "agriculture businesses." But
18 to that extent, he can answer.

19 THE WITNESS: You know, I -- from my
20 perspective, Exhibits 1 through 6 are referring to
21 and are specific information pertaining to
22 individual products.

23 I guess, in a broader context -- and, again,
24 in Exhibit 6, because it contains a website format
25 and additional information that -- again, in a

1 broader sense, it certainly pertains to a product
2 supplied and manufactured and produced by a
3 business.

4 But I'm not sure I understand the specific
5 question pertaining to a business.

6 BY MR. CHABOT:

7 Q. Okay. So let me -- let me try to make it a
8 little more specific, then. If you turn to
9 Exhibit 1.

10 A. Uh-huh.

11 Q. What are the types of seeds that are
12 described on this page as being treatable with
13 SEED+?

14 A. This particular product is focused on corn
15 and soybean crops.

16 Q. And what type of business would be
17 associated with corn and soybean?

18 A. Agribusiness.

19 Q. Is Exhibit 2 related to agribusiness?

20 A. In the same -- in the same context that 1 is
21 in relating to the SEED+ product, I would agree with
22 that, yes.

23 Q. And for Exhibit 3, would this also be
24 related -- is SEED+ being related to agribusiness?

25 MR. DE JONGE: I'm just going to maintain

1 the same vagueness objection. But, with that, he
2 can answer these.

3 THE WITNESS: Yes, I would say the same.

4 BY MR. CHABOT:

5 Q. Okay. All right. Can you point to any
6 exhibit in your declaration which is marketing
7 material directed to a home and garden customer?

8 A. I don't believe there's any in my exhibits.

9 And I would add the caveat that Cytozyme is
10 engaged in discussions with leading home and garden
11 companies for collaborations on these products. But
12 there's nothing in the exhibits specifically.

13 Q. Okay. I'm going to move to strike that last
14 portion as being nonresponsive to my question.

15 My question was can you point to any exhibit
16 in your declaration which is marketing material
17 directed to a home and garden customer?

18 And I believe your answer was no. Is that
19 correct?

20 A. That's correct.

21 Q. Can you point to any exhibit which is
22 marketing material directed to a forestry business?

23 A. My response would be the same as the home
24 and garden. There is no marketing collateral
25 directed to a forestry customer.

1 Q. Okay. What size containers are used for
2 selling SEED+ product?

3 A. Currently, in the United States, the two
4 size -- two available sizes would be a 5-pound
5 package and a 25-pound package.

6 Q. I would like to draw your attention to the
7 Cytozyme response for Interrogatory Number 26, and I
8 would like to know if that would in any way refresh
9 your recollection.

10 A. Yes. That, again, I was referring to dry
11 products. We do sell the liquid in that 1.6 and
12 2.5-gallon and 30-gallon drum.

13 Q. And 1.6 gallon would be the smallest
14 container size?

15 A. For the liquid formulation, that's correct.

16 Q. Okay. And approximately how many acres
17 would a 1.6 gallon container of SEED+ product treat?

18 A. Again, if I'm not mistaken, I believe it's
19 roughly equivalent to the 25-pound bucket of dry,
20 which I think is in the vicinity -- again, depending
21 on the crop -- 150 to 200 acres.

22 Q. Okay. Can you identify an exhibit to your
23 declaration that supports SEED+ products being sold
24 in brick and mortar stores?

25 A. I'm not sure I understand the question.

1 These are marketing-related materials in the
2 exhibits.

3 Q. Okay. But I'm saying --

4 A. I can --

5 Q. -- have you provided as any evidence,
6 documentary evidence, that SEED+ product is being
7 sold in brick and mortar retail stores?

8 MR. DE JONGE: And to clarify, when you say
9 "provided any evidence," you mean as attached to his
10 declaration?

11 MR. CHABOT: That is correct.

12 MR. DE JONGE: You want to look at the
13 exhibits. He's asking about the exhibits again.

14 THE WITNESS: Again, for clarification
15 purposes, Cytozyme sells to a distributor. We do
16 not sell to brick and mortars directly. But I do
17 know that the product is available in hundreds of
18 retail locations.

19 Having said that, is there anything in the
20 exhibits? Again, these are product and marketing
21 specific pieces that would not give indication of
22 brick and mortar sales.

23 BY MR. CHABOT:

24 Q. Thank you. Can you identify an exhibit to
25 your declaration that supports SEED+ products being

1 sold to plant nurseries?

2 A. No, I cannot.

3 And I want to make clear for the record that
4 Cytozyme sells to distribution. What happens beyond
5 that is their business channel.

6 Q. Okay. I want to strike your response after
7 the word "No."

8 Next question: Can you identify an exhibit
9 to your declaration that supports SEED+ products
10 being sold through catalogs?

11 A. To the extent that these product flyers and
12 information would be included in catalogs, that
13 would be my response to that.

14 Q. But you have not -- but there's no exhibit
15 which specifically is to a specific catalog,
16 correct?

17 A. That is correct.

18 Q. Okay. And can you identify an exhibit to
19 your declaration that supports SEED+ products being
20 sold through home improvement stores?

21 A. Not in the exhibits contained in this brief,
22 no. No, I do not have any information demonstrating
23 that.

24 Q. Does Cytozyme employ salesmen who take
25 orders for SEED+ product from customers?

1 A. No, we do not.

2 Q. In its answer, JH Biotech had cited a number
3 of similar trademarks which are either registered or
4 were pending applications at the United States
5 Patent and Trademark Office. Were you made aware of
6 these trademarks?

7 MR. DE JONGE: I'll just object. Can you
8 ask him specifics instead of a -- I don't know how
9 he can answer such an open-ended question.

10 MR. CHABOT: I just wanted to know if he was
11 aware of trademarks cited in the answer. But that's
12 okay. I can move along.

13 MR. DE JONGE: Okay.

14 BY MR. CHABOT:

15 Q. Besides the opposition filed against the
16 SEEDUP application, has Cytozyme filed any other
17 opposition proceedings that involve the SEED+ mark?

18 MR. DE JONGE: If you remember.

19 THE WITNESS: I don't recall. We do -- you
20 know, again, through the work we do with Peter's
21 firm and the watch service entailed, we do actively
22 protect and object to trademarks from time to time
23 which we view as competitive or similarly confusing,
24 I should say, to our current registered mark. So,
25 yes.

1 BY MR. CHABOT:

2 Q. And to the SEED+ mark, specifically?

3 A. I don't recall anything on SEED+
4 specifically, but -- so I can't give anything --

5 Q. Okay.

6 A. -- additional detail.

7 Q. And besides the -- excuse me. Besides the
8 opposition filed against SEEDUP, has there been any
9 cancellation proceedings that involve the SEED+ mark
10 against any other mark, to your knowledge?

11 A. Again, I don't recall.

12 Q. Okay. Has Cytozyme filed a lawsuit against
13 a company called Agri Life LLC?

14 A. No, we have not.

15 Q. Okay. Are you aware that Agri Life LLC
16 markets a product called BioMantra Seed+ for crop
17 fertilizers and soil amendments?

18 A. I've become aware of it through this process
19 and through some of the interrogatories, and we have
20 had direct discussions on taking similar steps and
21 actions to protect our registered trademark with
22 that entity.

23 Q. So you've had discussions with the owners of
24 Agri Life LLC regarding --

25 A. We have not had direct discussions with

1 them; we've had direct discussions internally with
2 our counsel on the matter.

3 Q. I see. But wouldn't a product name that
4 includes the Cytozyme SEED+ mark for use as a crop
5 fertilizer or soil amendment -- would be of a
6 concern to Cytozyme, would it not?

7 A. Yes, it would.

8 Q. Okay. And would not customers be more
9 likely to be confused with this product than the
10 SEEDUP product?

11 MR. DE JONGE: I'll object. Calls for a
12 legal conclusion.

13 MR. CHABOT: Okay.

14 BY MR. CHABOT:

15 Q. Can you identify an exhibit to your
16 declaration that describes SEED+ as being used for
17 horticulture?

18 MR. DE JONGE: I'll object as being vague
19 and ambiguous.

20 But you can answer if you can.

21 THE WITNESS: Again, the exhibits provided
22 are specific to broadacre crops. This is an example
23 of a crop-specific flyer. So we do have other
24 flyers pertaining to horticultural crops that are
25 engaged in sale and development of SEED+ in

1 horticultural segment.

2 MR. CHABOT: I'm going to again strike as
3 being non-responsive.

4 BY MR. CHABOT:

5 Q. My question was: Can you identify an
6 exhibit to your declaration that describes SEED+
7 being used for horticulture?

8 A. No, I cannot.

9 Q. Can you identify an exhibit to your
10 declaration that describes SEED+ used in the field
11 of forestry?

12 MR. DE JONGE: I'll object. Vague and
13 ambiguous again. But he can answer.

14 THE WITNESS: I thought I had responded to
15 that question earlier. No, there are no exhibits
16 that specifically relate to forestry segment.

17 BY MR. CHABOT:

18 Q. Did you sell SEED+ product for forestry use
19 in each calendar year from 2014 through 2017?

20 A. We -- I would have to check and see if we
21 made commercial sales. We were engaged in a project
22 with a large multinational company evaluating that
23 opportunity. Whether commercial sales were made, I
24 would need to check the records.

25 Q. I'd like to direct your attention to the

1 Cytozyme response to Interrogatory Number 10 and see
2 if that would refresh your recollection.

3 A. You're asking based on the sales figures
4 provided?

5 Q. Yes.

6 A. Again, I wouldn't -- I wouldn't recall from
7 that broad, general information there. And if this
8 is referring to SEED+ mark, again, I wouldn't know.
9 We were engaged in a development project for the
10 forestry segment with a large partner, and this
11 doesn't allow me enough information to be able to
12 give you a detailed response.

13 Q. Well, let's take it one year at a time.

14 For calendar year 2014, did you sell SEED+
15 product for forestry use?

16 MR. DE JONGE: I'll just object. Asked and
17 answered.

18 But go ahead.

19 THE WITNESS: No, we did not. And if I were
20 to conjecture a guess, it would have been in '18 or
21 '19. But, again, I'm not certain of the details.

22 BY MR. CHABOT:

23 Q. Did you sell SEED+ product for forestry use
24 in 2016?

25 MR. DE JONGE: Same objection.

1 THE WITNESS: No.

2 BY MR. CHABOT:

3 Q. Did you sell SEED+ product for forestry use
4 in calendar year 2017?

5 MR. DE JONGE: Same objection.

6 THE WITNESS: No.

7 BY MR. CHABOT:

8 Q. And for the calendar years 2014, 2016, and
9 2017, would it be true that you had no sales of
10 agribusiness -- or sale of -- strike that.

11 Would you agree that there were no SEED+
12 product sales to agribusiness for years 2014, 2016,
13 and 2017?

14 A. For the SEED+ brand?

15 Q. Any SEED+ product.

16 A. We did sell probably quite significant
17 quantities of SEED+ product, just not under SEED+
18 brand.

19 Q. Well, I'm talking about product bearing the
20 SEED+ mark which is at issue in this opposition.

21 So, again, my question is --

22 A. Then -- then -- yeah, when you say
23 "product," I was mistaking that for the product
24 itself. And, again, we have a branded business and
25 a non-branded business.

1 And for the -- for the purpose of clarifying
2 SEED+ branded product, no, we did not sell in those
3 years.

4 Q. And I noticed that in 2015 there was only
5 \$600 reported in your interrogatory response -- or
6 response to Interrogatory Number 10.

7 Do you recall if that was a single sale?

8 A. I don't recall.

9 Q. Okay. I'd like to turn now to Cytozyme's
10 notice of reliance, Exhibit 1, page 15, and it is
11 Bates stamped CYTOZYME0040.

12 Let me know when you have it.

13 A. Yes, we're here.

14 Q. Okay. I'd like you to take a moment and
15 review, particularly, the first paragraph.

16 A. Okay.

17 Q. Do you recognize this document?

18 A. Yes, I do.

19 Q. Whose name is listed at the bottom of the
20 document?

21 A. My name, Eric Baughman.

22 Q. Is that your signature?

23 A. Yes, it is.

24 Q. And the date you signed was July 26, 2018?

25 A. Yes.

1 Q. Isn't it true you declared that SEED+ has
2 been in continuous use in interstate commerce for
3 five consecutive years from the August 21st, 2012,
4 issue date?

5 A. Yes.

6 Q. Would you agree the facts you declared in
7 this document to be true are not true?

8 A. True.

9 Q. You're stating that you have had five years
10 of continuous use when there were no sales for three
11 of the five years, 2014, 2016, and 2017?

12 MR. DE JONGE: I'll object as vague and
13 ambiguous question. And asked and answered.

14 BY MR. CHABOT:

15 Q. Would you answer the question, sir?

16 A. Yeah, you know, you're referring to
17 commercial sales of the SEED+ brand. "Use" is a
18 little ambiguous because, again, these products and
19 the quantities that were sold from year to year
20 could have been used in subsequent following years.
21 So the question is ambiguous, in my view.

22 But the company was engaged in development
23 activities and using the mark with an eye towards
24 developing and growing the business. So I don't
25 view those as being at odds with one another.

1 Q. Would you admit that SEED+ customers are
2 sophisticated purchasers?

3 MR. DE JONGE: I'll object. Vague and
4 ambiguous and requires a legal understanding of what
5 "sophisticated" means.

6 BY MR. CHABOT:

7 Q. Answer, if you know.

8 A. I don't think it's a black-and-white answer.
9 I would say that some farmers are more sophisticated
10 than others.

11 Q. Does Cytozyme provide advice to potential
12 customers?

13 MR. DE JONGE: I'll say vague and --
14 Object. Vague and ambiguous.

15 BY MR. CHABOT:

16 Q. Has Cytozyme --

17 A. They provide technical understanding of the
18 product, use guidelines, and other technically
19 related information to the product.

20 Q. And that information would typically be
21 provided to a prospective customer prior to the
22 prospective customer purchasing the product; is that
23 correct?

24 A. That's a fair statement, yes.

25 Q. So with the --

1 A. And, sorry, I want to go back to the point,
2 too, that Cytozyme does not have sales teams. We
3 have R&D and technical teams. Our distribution
4 partners and the retail partners are the
5 organizations that have large sales organizations.

6 So our activities are relegated more to
7 providing the technical training and product detail
8 to those sales organizations.

9 Q. Understood. And I would assume Verdesian
10 has a sales staff that is used to sell SEED+ product
11 to potential customers.

12 A. That is correct.

13 Q. Okay. And does -- to your knowledge, does
14 their sales staff do -- provide advice to customers
15 regarding SEED+?

16 A. Yes, they do.

17 Q. Okay. Is it reasonable to say that
18 Cytozyme's customers, either directly through
19 Cytozyme or through Verdesian, are well informed
20 about the SEED+ product before they make a purchase?

21 MR. DE JONGE: I'll object as vague and
22 ambiguous and asks him to speculate.

23 THE WITNESS: Yeah, again, it's an arm's
24 length. When you work with a distribution partner,
25 they are the direct selling organization. So I

1 would not be able to give you a very good assessment
2 as to the level of sophistication of the end user
3 and the customer.

4 BY MR. CHABOT:

5 Q. Is it fair to say Cytozyme customers are not
6 impulse purchasers?

7 MR. DE JONGE: I'll object. Vague and
8 ambiguous, and it requires a legal understanding of
9 what "impulse" means.

10 BY MR. CHABOT:

11 Q. Mr. Baughman, what do you understand
12 "impulse purchaser" to mean?

13 A. Somebody who makes a purchasing decision
14 with limited information. Or on emotional basis.

15 Q. Do you believe that those are potential
16 customers who would purchase a SEED+ product?

17 MR. DE JONGE: I'll object. Asks him to
18 speculate.

19 THE WITNESS: You know, again, I wouldn't be
20 able to say. I'm not involved in the customer sale
21 end of things and really not in a position to make
22 or draw any conclusions about how purchasers make
23 their decisions, whether it involves impulse or not,
24 or the level of sophistication of the buyer.

25 BY MR. CHABOT:

1 Q. I believe you previously testified that a
2 1.6-gallon container of SEED+ would treat between
3 approximately 150 and 200 acres. Would it be fair
4 to say that the typical home and garden customer
5 owns less than 25 acres?

6 MR. DE JONGE: Object. Asks him to
7 speculate.

8 But go ahead.

9 THE WITNESS: That would seem logical to me,
10 yes.

11 BY MR. CHABOT:

12 Q. So wouldn't you agree that it's unlikely
13 there will be customers who purchase even the
14 smallest size of SEED+ product, a 1.6 gallon
15 container, for their home and garden use?

16 A. That's -- that's a fair -- fair statement,
17 yes.

18 Q. Okay. And I have no further questions.

19 A. Okay.

20 (Deposition concluded at 12:45 p.m. 29)

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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

2

3

4 I, Debra A. Bollman, Certified Shorthand
5 Reporter and within and for the State of California
6 do hereby certify:

7

8 That Eric Baughman, the witness whose deposition is
9 hereinbefore set forth, was duly sworn under penalty
10 of perjury by me before the commencement of such
11 deposition and that such deposition was taken before
12 me and is a true record of the testimony given by
13 such witness.

14

15 I further certify that the adverse party,
16 JH Biotech, Inc., was represented by counsel at the
17 deposition.

18

19 I further certify that the deposition of
20 Eric Baughman, occurred telephonically, Wednesday,
21 May 6th, 2019, commencing at 12:02 p.m. to 12:45
22 p.m.

23

24 I further certify that I am not related to
25 any of the parties to this action by blood or

1 marriage, I am not employed by or an attorney to any
2 of the parties to this action, and that I am in no
3 way interested, financially or otherwise, in the
4 outcome of this matter.

5

6 IN WITNESS WHEREOF, I have hereunto set my
7 hand this 16TH day of MAY, 2020.

8



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10

11 Debra Bollman, RMR, CRR, CSR No. 11648

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No. 296799

Re: Deposition of **Eric Chandler Baughman**

Date: 5/6/2020

Case: Cytosyme Laboratories, Inc. -v- JH Biotech, Inc. (TTAB)


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ACKNOWLEDGMENT OF DEPONENT

I, Eric Chandler Baughman, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me and any corrections appear on the attached Errata sheet signed by me.

5/6/20

(Date)



(Signature)